

**Zoning Board of Adjustment
Regular Meeting**

**Township of Chatham
August 21, 2014**

Mr. Vivona called the Regular Meeting of August 21, 2014 to Order at 7:30 P.M with the reading of the Open Public Meetings Act

Roll Call:

Mr. Tony Vivona
Mr. Richard Williams

Mr. Glen Nelson
Mr. William Styple, Alt. #2

Mr. Jon Weston
Mrs. Tina Romano

Absent: Thomas Polise, Alt#1
Mrs. Kathryn Surmay Kenny

Professionals Present: Steven Shaw, Attorney
Robert O'Brien, Engineer
Robert Michaels, Planner
Dr. Bruce Einstein
Mr. Sean Rankin, Attorney (sitting for Mr. Shaw re: ACE)

Minutes: July 17, 2014 - Mr. Nelson made a motion, seconded by Mr. Williams, to adopt the minutes as distributed.

Hearings:

**Golden River Homes, Llc,
11 Sunset Drive
Block: 61 Lot: 16.**

Calendar BOA 14-61-16

Mr. Gentile, Applicant
Mr. DeAngelis, Attorney
Mr. Murphy, Engineer

The Board was advised that Mr. Weston had a conflict because of a personal relationship with Mr. Gentile so he will not participate.

Mr. DeAngelis, attorney noted that there were only five members present. We have a D variance so I would need 5 members to carry this application. He did not feel he could proceed and asked to postpone to the next meeting when full complement of members is present. If we didn't need the D variance I would only need a majority count.

Mr. Shaw said the applicant has the right to carry an application if a full board is not present. The applicant also has the right to proceed this evening if he so chose and defer the decision until another date when the other members are given an opportunity to review the record. He thought it was the applicants right to decide how he wishes to proceed.

After a discussion with his client Mr. DeAngelis advised that they would not proceed this evening without 7 Board members present. They therefore asked that the application be carried to the September meeting.

Mr. Vivona pointed out that he was opposing counsel present and he asked that he enter his appearance on the record.

Mr. John Mills, attorney from Morristown was representing a resident(s) of surrounding properties. He noted that they had brought an expert (David Zimmerman) at the expense of his client so he wanted to place on the record his reservation to move the leg of prosecution if this application does not move forward at the next meeting.

Mr. Vivona verified the next meeting date as September 18th.

Mr. Shaw explained the rights of the applicant to persons present for this application and advised it would be carried to the next meeting without further legal notice.

**Yardville Supply
(Ace Hardware)
650 Shunpike Road
Block: 135 Lot: 22**

Calendar BOA 14-135-22

Mr. Vivona advised that Mr. Shaw had a conflict so Sean Rankin will be filling in for him as our attorney for this application.

Ms. Doherty, Attorney

Ms. Doherty said she was representing Yardville Supply (Ace Hardware) We are back here tonight seeking a use variance (D1) for outdoor storage. She had a professional planner Mr. William Page who had been with us in January 2014 who will be our witness this evening. We wanted to ask the Board to waive the on-site and allowing us to fully present this evening.

Mr. Vivona did not think they could waive the site visit.

Ms. Doherty said that her understanding was that if the applicant requested it would be at this Board's discretion. Most of you are familiar with the site as you were out there earlier this year so we were hoping that at your discretion and knowledge of the location this would be permissible.

Mr. Vivona suggested moving forward for now. His hesitation is that we are dealing with propane and not flowers. Present what you have and if we feel comfortable with what we hear we may or may not waive it.

Mr. William Page, licensed engineer, listed his credentials. He had been here for the initial application. He has met with the landlord and the applicant. He has been to the subject property six times. He has prepared a site plan and a report for this project. The site plan (exhibit A13) shows an overview of the shopping center showing the walkway which is connected to two major buildings. Ace hardware (looking from Shunpike Road) is on the left side of the shopping center. We would like to install the propane on the left side of Ace. As mentioned earlier the shopping center has recently gone through some renovations and they installed signage, parking was restriped and there is the storage in back of Ace Hardware which is why we were here initially. In regards to the location of the propane storage space it has been placed closer to the front of the store for visibility and convenience. The employees can also keep a good eye on the racks. As a planner he noted that this location is somewhat consistent with a lot of hardware/outdoor companies that sell this type of product. It allows visibility for the customer and is also allows the employees to insure that all is in order. It is locked and if someone were to choose to purchase the canister they would need someone to unlock the rack (we propose 18 twenty pound canisters). He noted that there are other more sophisticated ways where you would swipe a card to access the canister. Presently we are using the employee system. There will do no filling of the tanks on premises. Mr. Page noted that the hardware located across the street also sells 20 lb. canisters and that they are located on the side of their building.

Mr. Vivona was concerned about safety. You are located on the corner and if someone pulls in with a truck/trailer where do they go? What will protect the product from someone sideswiping it?

Mr. Vivona also said according to the plan it is shown right on the corner so if someone pulls into that parking spot, doesn't see it and puts it in drive instead of reverse ... I would feel a lot better if there were several tubes to impede any errant vehicle.

You also do barbeque demonstrations; sell smokers, etc. out there in that same corner so that would not be allowed there anymore. You can't have open flame near tanks.

Ms. Doherty said she was sure that ACE Hardware can come up with some other creative demonstrations for their smokers, barbeques, etc. She did not think that would be an issue. Certainly for them having the ability to have these things with the propane is something that all other locations have. This is a common size and in an area like Chatham Township it is a popular product.

Mr. Vivona referred to the initial application. There were conditions (he believed in the outside storage) set about chemicals, propane being stored in the rack area. You are not violating that restriction.

Mr. Page referred to Paramus Home Depot said their garden center was set to the back and where as in East Hanover it is located in the front of the garden section with an elevated sidewalk. Ace doesn't have a garden center.

Mr. Vivona said it only held 18 canisters, say on the 4th of July you are expecting 35 people to show up, will there be storage somewhere else or when it's gone its gone? There will be no other storage? There won't be extra bottles somewhere not seen?

Mr. Page said the intent was what is there is there

Ms. Doherty said it was her understanding with the regulations it would be illegal to store it anywhere they wanted. It has to be in a sealed canister. For something like the 4th of July she was sure it would be hit or miss for the demand in the area and how many people will be last minute.

Ms. Romano asked if there would be enough space because the last time she had been there they had chairs etc. on the sidewalk. Will this interfere with products outside?

Mr. Page said this actually will not take as much room from the outside products presented.

Mr. Vivona asked for the dimensions of the storage unit? He was directed to the second page of plans where it shows 27"wide, 65" high. It is NFPA approved for propane canister storage.

Ms. Doherty said it would be a fixed location. It cannot be moved around.

Mr. Vivona, to clarify, you have this right at the corner of the building?

Mr. Page said it could be moved a little if needed. It is placed for easy delivery.

Mr. Vivona asked if the front windows went to the edge of the building or is there a couple foot gap?

Mr. Page believed there was a little gap.

Mr. Vivona said he hated seeing it right next to the parking spot. The pillar that holds up the awning is substantial is it not?

Mr. Page said they could do it next to the rack with a minimum of two feet back from the curb.

Mr. Vivona thought it would need one on the side and one at the front curb so that it is not blocking or nothing could roll into it. He felt the column was pretty substantial.

Mr. Vivona asked for questions from the Board.

Ms. Romano asked if this was just for one unit.

Ms. Doherty said it was.

Mr. Michaels raised a question about one of the photographs which doesn't seem to show the column on that corner. He also thought testimony was needed regarding the description before variance relief is granted. According to my report there are two statutes in the ordinance that need to be addressed. (Sec 3- 24a which is all material/equipment which shall be stored in the enclosed structure and explanation of the merchandise to be displayed outside the building). He thought they needed some testimony.

Mr. Vivona asked if the ordinance says no outside storage/displays. He said he was aware that the Shop-Rite got a variance relief for such displays.

Mr. Page said Mr. Michaels drafted a letter which mentioned the use variance which would still allow the outdoor storage for Ace Hardware. Also the use variance would allow displays outside the hardware. The D1 variance would be required to permit a use in a zone in which it is not interpreted as permitted when you consider the granting of the D1 use variance. Again it is not listed as a permitted use. Basically since it is not listed as a permitted use this is where it is not permitted and why we are here. Special reasons must be made/stated to grant the D1 variance. The purpose of zoning is the promotion of the general welfare because either the proposed use serves the total good or promotes the general welfare because the proposed site is suited for the use and meets the criteria of the statute. The positive criteria if granted are that the propane storage rack is not noisy, will not generate noxious or hazardous odors. The rack will hold 18 twenty pound canisters which will be used for pleasure for homeowners. There is another such facility in the area which sells propane tanks. Installation of the storage rack will not be unique to the area for a home improvement store. The location of the rack is a front end outside of Ace Hardware store. This makes the location handy for residential pickup. The rack meets the requirements of NFPA and is compliant with building codes. The storage of the propane cans is a convenience to the residents of Chatham. If the Board finds the positive criteria outweighs the negative criteria a variance can be granted. The negative criteria to that outdoor storage and displays are not listed as a permitted use in Chatham Township. From the physical, aesthetic and use prospective there is no real evidence associated with this application. Accordingly the positive criteria as stated outweighs the negative

criteria. The propane storage rack would be clean and non-toxic. The cylinders of propane, especially for the warmer season, is typical merchandise sold by hardware or home improvement type stores. Accordingly the Board should grant the relief being requested. Granting the relief will not create any detriment to the health, safety and welfare to the general public.

Mr. Vivona asked for questions from the Board. None heard. He then asked for questions/comments from the Public.

Mr. McGrath from McGrath Hardware store across the street. He said he had not seen the drawing but it was mentioned it would be under the overhang. The cage is 24 deep with a 48 inch door which will making the door opening out 60 some inches and you then have to get the bottles. The bottles will be close to 8 ft. off the building. You should consider where ever those bottles will be as people will try to walk in there. The overhang will be a problem.

Ms. Doherty to be clear, Ace has their own propane canister.

Mr. Vivona asked if Ace Hardware had any rules about overhead canopies.

Ms. Doherty said she was not aware of any. Ace Hardware being the applicant would know their own rules and determine the placement of their proposed storage rack. She was not sure if the hardware store across the street has the additional haulers outside where his store rack is located. She asked Mr. McGrath if he had a use variance for outdoor storage. Mr. McGrath said he had been there 17 years and felt that they came out and approved. Ms. Doherty thought that 17 years ago may predate the present ordinance.

Mr. Vivona felt some sort of clarity had to be made on the issue presented by Mr. McGrath. Does Ace have any ruling/position about propane by doors.

Mr. Page thought it might be addressed in the fire code. He did not know if the fire company had looked/commented on this.

Mr. Vivona asked if the fire department had been alerted to this application and he was advised that they had not. That being said Mr. Vivona thought the Fire Department should look at it and give us their ruling. If worse came to worse it might have to be moved to a different location with signage up to direct the customer to the propane location. Due to that we should arrange a site visit so we can see the site and possibly you should have an alternate site just in case the Fire Marshall says it cannot be where you propose. Also, he would like to see Ace Hardware's description of what their practices for locating propane storage tanks. He asked if they would be exchanging any propane tank or just an Ace Hardware product.

Ms. Doherty said it was her understanding that it would be any tank.

Mr. Vivona scheduled a site visit of September 6 at 9 am. Also, to the right, are their houses there or is that just woods?

Ms. Doherty said there is a housing complex, that is why Mr. Shaw stepped down.

Motion to adjourn

Respectfully submitted

Mary Ann Fasano
Transcribing Secretary